

REMARKS/ARGUMENTS

Claims 1-20 are currently pending. Claims 1-5 and 7-20 stand rejected, claim 6 was objected to as being dependent upon a rejected base claim but was found to be allowable if rewritten in independent form. By this amendment, claims 1 and 16 are amended to recite the allowable features of claim 6. Claims 7, 8 and 11-13 are amended to depend from amended claim 1, claims 3, 6 and 7 are cancelled without prejudice to filing a continuation application and claims 21-23 are added.

Applicant's Invention

The instant invention provides an impact resistant substrate juxtaposed in close spatial relationship to the back of the wearer's neck. The rigid substrate¹ provides protection to the wearer's spine in the event the user falls back against a curb, rail or other protrusion during cycling, roller blading, or the like. The art of record does not anticipate or suggest the instant invention.

Response to the Amendment

With respect to the Response to the Amendment, the Examiner's statement only focuses on the amended recitation "during physical activities" and does not discuss Applicant's argument distinguishing the claimed invention over the cited prior art. Applicant respectfully submits that the neither *Lipton* alone or in combination with *Hujar* disclose the subject invention. However, in the light of moving this case towards issuance, Applicant has amended claims 1 and 16, incorporating the allowable features of claim 6. Claims 7, 8 and 11-13 are amended to depend from amended claim 1 as provided previously.

Arguments with Respect to New Claims

Claims 21-23 are added. New claim 21 depends directly from allowable independent claim 1 as amended, recites additional features thereto and is allowable therefore. Specifically, claim recites, "at least a portion of said first and second

¹ See, for example, Specification, page 5, line 25.

substrates extend along at least a portion of a dorsal surface of the person's neck" among other features. Support for these new claims can be found at page 6 lines 9-19, page 9, lines 14-17 and the figures.

New independent claim 22 recites "a first impact-resistant pliable substrate, whereby at least a portion of said substrate extends along at least a portion of a dorsal surface of the neck" among other features, while claim 23 depends directly from new claim 22 and recites, "at least a portion of said substrate extends along said dorsal surface between the person's thoracic vertebra to approximately a base of the said lower cranium" among other features. Again, support for these new claims can be found at page 6 lines 9-19, page 9, lines 14-17 and the figures

It is respectfully submitted that neither *Lipton* nor *Hujar* discloses each and every element of the new claims 22-23. Specifically, Lipton discloses:

FIG. 4 shows the first or mastication muscle group with a pad of the invention superimposed thereon in dashed lines. As can be seen, the pad is applied with the cut-out 10 circling the front half of the neck ... For the application of therapeutic heat to the second group of back and neck muscles, the pad is positioned as shown in FIGS. 5 and 6. As can be seen from the Figures, the cut-out 10 permits extending portions 6 and 6' to drape around the back and cover the upper Trapezius 214 while at the same time the central portion 2 of the pad fits about the neck and comfortably covers the Sternocleidomastoid 216... As seen in FIG. 7, the additional length provided by the extending portions 6 and 6' permit them to drape over the chest to cover both the upper end of the Trapezius 214, the Cervical 218 and the upper Pectoralis 220²

Likewise, *Hujar* discloses "an additional pouch extending along the back of the head of the wearer."³

Neither *Lipton* nor *Hujar* disclose the features of new claims 21-23. Specifically, *Lipton* nor *Hujar* disclose "at least a portion of said first and second substrates extend along at least a portion of a dorsal surface of the person's neck", "a first impact-resistant pliable substrate, whereby at least a portion of said substrate extends along at least a portion of a dorsal surface of the neck" or "at least a portion of said substrate extends along said dorsal surface between the person's thoracic vertebra to approximately a

² Lipton, col. 3, lines 63-68 and col. 4, lines 1-35.

³ Hujar, col. 3, lines 32-33.

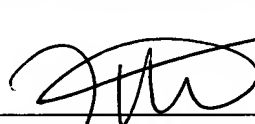
base of the said lower cranium" among other features, as recited by claims 21, 22 and 23 respectively. The new claims are not suggested by the references, and are therefore allowable.

Accordingly, Applicant respectfully requests that the Examiner issue a Notice of Allowance in this application. If the Examiner disagrees or has any questions regarding this submission, Applicant respectfully requests that the Examiner contact the undersigned at the number below.

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Respectfully submitted,

CHERSKOV & FLAYNIK



Timothy L. Harney
Reg. No. 38,174

20 North Wacker Drive
Suite 1447
Chicago, IL 60606
Telephone: (312) 621-1330
Facsimile: (312) 621-0088.